

HOUSE BILL 472
By Whitson

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 11, Part 2, relative to facilities which provide residential care for the aged.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following language as a new, appropriately designated section:

Section _____. (a) If the commissioner finds that a facility which provides residential care for the aged is providing such care without a license, the commissioner may, without prior notice, order the facility immediately to cease and desist from providing residential care for the aged. The commissioner must find that entering the order is in the public interest; necessary for the protection of the health, safety, or welfare of the residents of the facility; and consistent with the purposes fairly intended by this part.

(b) The order must state the relevant findings of fact and conclusions of law that support the commissioner's finding that entering the order without prior notice is in the public interest, necessary for the protection of the residents of the facility, and consistent with this part. The order must provide notice to the respondent of the respondent's rights and responsibilities concerning review of the order.

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(c) The owner of the facility ordered to cease and desist operation may seek review of the order before the commissioner or the commissioner's designee as set out below:

(1) The owner or legal representative of the facility may request an informal conference before the commissioner or the commissioner's designee. The request must be filed with the commissioner within thirty (30) days of entry of the order. The commissioner or the commissioner's designee shall convene the requested informal conference within seven (7) days of the date of receipt of such request. The conference is informal and the facility has the right to be represented by counsel at all stages of the informal conference.

(2) The sole issue to be determined at the informal conference is whether the facility was operating without a license as required by this part prior to or concurrently with the date of the entry of the order. This part and its rules, control this determination. At the conference the commissioner may uphold, amend, or rescind the cease and desist order. Unless contested under subdivision (c)(3), the original or amended cease and desist order becomes a final order within seven (7) days.

(3) If the commissioner or the commissioner's designee determines, as a result of the informal conference, that the cease and desist order should be amended or should not be rescinded, the owner or legal representative of the facility may seek review of the order under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. The request must be made in writing to the commissioner within seven (7) days of receipt of written notice of the commissioner's decision. Upon receipt of the request, the commissioner shall immediately refer the matter to the department of state for initiation of contested case proceedings.

(4) If the respondent fails to request an informal conference under subdivision (c)(1), then the cease and desist order becomes a final order of the commissioner within thirty (30) days of its entry. The facility may obtain judicial review of this final order in the chancery court of Davidson County under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(d) It is a Class B misdemeanor to violate a cease and desist order lawfully entered by the commissioner. Each day of operation in violation of the commissioner's cease and desist order, calculated from the date of its service upon the owner or operator of the facility, is a separate offense.

(e) Nothing in this part precludes any person, including the department, who is aggrieved by the operation of an unlicensed facility from pursuing other remedies and sanctions authorized by law.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.